

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

NEW NGC, INC.,

Plaintiff,

Civil Action No. 3:10-cv-22

v.

ACE AMERICAN INSURANCE
COMPANY, AMERICAN GUARANTEE &
LIABILITY INSURANCE COMPANY,
LIBERTY INSURANCE UNDERWRITERS,
INC., NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA, and LUMBERMENS
MUTUAL CASUALTY COMPANY,

Defendants.

**ACE AMERICAN INSURANCE COMPANY’S MEMORANDUM IN SUPPORT OF ITS
PARTIAL MOTION TO DISMISS, OR IN THE ALTERNATIVE STAY**

Defendant ACE American Insurance Company (“ACE”) files this memorandum in support of its partial motion to dismiss, or in the alternative stay, and respectfully shows as follows:

ACE previously filed a partial motion to dismiss, or in the alternative stay (Doc. No. 35) claims made under the ACE excess policies numbered G23789504, G23887423 and G24638170 in effect from November 1, 2006 to November 1, 2007, November 1, 2007 to November 1, 2008 and November 1, 2008 to November 1, 2009 respectively, based on the binding arbitration provisions applicable to the policies. NGC has since filed an amended and supplemental complaint (Doc. No. 64), which sets forth substantially similar claims under the policies and

which is equally subject to the applicable arbitration provisions. ACE, therefore, incorporates the arguments set forth in its earlier motion by reference and reasserts them herein.

Respectfully submitted this 23rd day of August, 2010.

COZEN O'CONNOR

By: s/ Kimberly Sullivan
Kimberly Sullivan
NC State Bar No. 23480
301 S. College Street, Ste. 2100
Charlotte, NC 28202
Tel: (704) 376-3400
E-mail: ksullivan@cozen.com

and

Joseph A. Ziemianski, Esquire
(Admitted Pro Hac Vice)
Cozen O'Connor
One Houston Center
1221 McKinney Street, Suite 2900
Houston, Texas 77010
Tel: (832) 214-3920
E-mail: jziemianski@cozen.com

***Attorneys for Defendant ACE American
Insurance Company***

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ACE American Insurance Company's Memorandum in Support of Its Partial Motion to Dismiss, or in the Alternative Stay** was served on the following counsel of record this 23rd day of August, 2010, via ECF notification addressed as follows:

R. Steven DeGeorge, Esq.
sdegeorge@rbh.com

Jim Bryant, Esq.
jbryan@nexsenpruet.com

Michel Y. Horton, Esq.
mhorton@morganlewis.com

Hatcher B. Kincheloe, Esq.
hkincheloe@hedrickgardner.com

David S. Cox, Esq.
dc Cox@morganlewis.com

Paul A. Zevnik, Esq.
pzevnik@morganlewis.com

Jennifer M. Kennedy, Esq.
Jennifer.kennedy@morganlewis.com

Janice L. Kopec, Esq.
jkopec@morganlewis.com

Susan K. Burkhart, Esq.
skb@cshlaw.com

Stephen Berry, Esq.
sberry@mckennalong.com

s/ Kimberly Sullivan

Kimberly Sullivan